

***What Every Member of the
Trade Community Should Know About:***

NAFTA Eligibility and Building Stone



An Advanced Level
Informed Compliance Publication of the
U.S. Customs Service

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or “Mod Act,” became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are “*informed compliance*” and “*shared responsibility*.” These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, recordkeeping, drawback, penalties and liquidated damages.

The National Commodity Specialist Division, Office of Regulations & Rulings, has prepared this publication on NAFTA Eligibility and Building Stone, as part of a series of informed compliance publications advising the trade community of changes in Customs procedures as a result of the Mod Act. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Part 177 of the Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

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NAFTA Eligibility and Building Stone

Introduction

Under the North American Free Trade Agreement (involving the United States, Canada and Mexico), merchandise produced in NAFTA countries may be eligible for reduced rates of duty under certain circumstances. The rules of NAFTA eligibility are outlined in General Note 12 of the Harmonized Tariff Schedule of the United States (HTS).

This publication will deal exclusively with the NAFTA eligibility rules for monumental and building stone - *i.e.*, whether or not a particular importation of stone from a NAFTA country is subject to the lower NAFTA rates of duty. The Annex 311 rules for determining the country of origin of NAFTA goods are set forth in 19 CFR Part 102. See T.D. 96-46, published in 61 Fed Reg 28932 (June 6, 1996). Pursuant to Annex 311 of the North American Free Trade Act, these rules should be used when we determine the country of origin of goods processed in Canada or Mexico for marking purposes. The country of origin rules are also used when we determine whether the CA or MX rate is applicable to originating goods that have been processed in more than one NAFTA country prior to importation into the United States. A future publication will discuss the application of these rules to monumental or building stone.

Under General Note 12(b) of the HTS, goods which are wholly obtained or produced entirely in a NAFTA country are eligible for NAFTA treatment. Thus, monumental or building stone which is extracted from the earth in a NAFTA country (merchandise classifiable in Chapter 25 of the HTS) is clearly eligible for NAFTA status. In addition, NAFTA would be applicable to worked monumental or building stone and articles of monumental or building stone (Chapter 68 merchandise) produced in a NAFTA country exclusively from stone material which was extracted from the earth of a NAFTA country.

The situations described above are relatively straightforward. This publication will focus primarily on the more complex area of tariff shifts. Goods which were transformed in the territory of a NAFTA country are eligible for NAFTA status when each of the non-originating materials used in the production of the merchandise underwent a change in tariff classification described in General Note 12(t).

When stone originating in a non-NAFTA country is further worked in a NAFTA country, the finished product may or may not qualify for NAFTA status. Certain tariff

shifts (changes in classification from one tariff provision to another) are eligible for NAFTA treatment while other tariff shifts do not qualify for NAFTA status. This publication will discuss the permissible and impermissible tariff shifts for monumental and building stone.

TARIFF SHIFTS

When stone material originating in a non-NAFTA country is processed to a certain extent in a NAFTA country, the finished product may or may not qualify for NAFTA treatment. This determination is dependent on the precise degree of processing performed and whether or not this work constitutes an allowable tariff shift under General Note 12(t).

The discussion of tariff shifts in this publication assumes that the reader has knowledge of the principles which govern the classification of building stone. These principles were explained in the publications on building stone which have been issued previously (see the Informed Compliance Publications on **MARBLE** and **GRANITE**). The earlier publications discussed various HTS provisions for building stone (including various subheadings under headings 2515, 2516 and 6802) and explained distinctions in classification which are based on the degree to which a stone has been worked. These distinctions are crucial to an understanding of the permissible and impermissible tariff shifts for stone under NAFTA.

A great deal of monumental and building stone eligible for reduced rates of duty under the North American Free Trade Act (NAFTA) is produced in NAFTA countries. However, the NAFTA countries also import a great deal of stone from non-NAFTA countries. In some instances this stone is worked sufficiently in the NAFTA country to permit NAFTA treatment (i.e., when an allowable tariff shift has taken place). However, in other instances an allowable tariff shift has not taken place and the merchandise is not eligible for NAFTA treatment.

While some stone imported into the United States from Canada or Mexico is eligible for NAFTA treatment, other importations of stone from these countries fail to qualify for NAFTA status. Importers must know whether or not the merchandise originated in the NAFTA country. If the stone originated in a non-NAFTA country and was then worked in a NAFTA country, the shipper in Canada or Mexico must retain records providing information on the precise form in which the merchandise arrived in the NAFTA country and the precise extent of the work performed in the NAFTA country. This information is crucial to our determination of whether or not an allowable tariff shift has taken place and whether or not the stone qualifies for NAFTA

treatment.

We will now present a discussion of the rules regarding NAFTA eligibility and tariff shifts for importations of various building stones classifiable under specific HTS provisions.

SUBHEADINGS 2515.11 AND 2515.12

Regarding importations of merchandise classifiable in Chapter 25, General Note 12 to the HTS only allows tariff shifts from other chapters. General Note 12(t) permits a "change to headings 2501 through 2530 from any other chapter."

By their very nature, most Chapter 25 items (crude stones and minerals, or stones and minerals worked only to a very slight extent) are not likely to have undergone tariff shifts from other chapters. **Most Chapter 25 merchandise qualifies for NAFTA treatment only when the product is wholly obtained or produced in a NAFTA country.** Thus, crude or roughly trimmed marble (classifiable in subheading 2515.11.00) quarried in a NAFTA country clearly qualifies for NAFTA treatment. Marble quarried in a NAFTA country and "merely cut, by sawing or otherwise, into blocks or slabs of a rectangular shape" in a NAFTA country (subheading 2515.12.10) would also qualify for NAFTA treatment.

In order to qualify for NAFTA treatment, stone classifiable in subheadings 2515.11 and 2515.12 must be quarried in a NAFTA country and the cutting must take place in a NAFTA country. However, tariff shifts from one subheading to another within heading 2515 (or any other shifts within Chapter 25) are not permitted.

Example: Crude or roughly trimmed marble (2515.11) from Italy is "merely cut, by sawing or otherwise, into blocks or slabs of a rectangular shape" (2515.12.10) in Canada? Does the merchandise qualify for NAFTA treatment?

Answer: No. General Note 12 does not permit tariff shifts within Chapter 25. The shift from 2515.11 to 2515.12 is not an allowable tariff shift.

In the same manner, crude marble (2515.11) from a non-NAFTA country converted into marble chips (2517.41) in a NAFTA country does not qualify for NAFTA treatment, since tariff shifts within Chapter 25 are not permitted.

SUBHEADING 2515.20

Crude or roughly trimmed limestone with an apparent specific gravity of 2.5 or more is classifiable in subheading 2515.20.00, HTS; when this product is quarried in a NAFTA country, it clearly qualifies for NAFTA treatment. In the same manner, when crude limestone quarried in a NAFTA country is "merely cut, by sawing or otherwise, into blocks or slabs of a rectangular shape" in a NAFTA country, this merchandise (also classifiable in 2515.20.00) would qualify for NAFTA status.

However, when crude limestone (classifiable in 2515.20) quarried in a non-NAFTA country is "merely cut, by sawing or otherwise into blocks or slabs of a rectangular shape" in a NAFTA country, this merchandise (also classifiable in 2515.20) would not qualify for NAFTA treatment. No tariff shift has taken place.

Since tariff shifts within Chapter 25 are not permitted, crude limestone (2515.11) from a non-NAFTA country converted into limestone chips (2517.49) in a NAFTA country would also not qualify for NAFTA status.

SUBHEADINGS 2516.11 and 2516.12

Crude or roughly trimmed granite (subheading 2516.11.00) quarried in a NAFTA country clearly qualifies for NAFTA treatment. NAFTA status would also be accorded to granite quarried in a NAFTA country and "merely cut, by sawing or otherwise, into blocks of a rectangular shape" (subheading 2516.12.00) in a NAFTA country. However, tariff shifts are not permitted within Chapter 25.

Example: Crude granite (2516.11) quarried in Italy is "merely cut, by sawing or otherwise, into blocks or slabs of a rectangular shape" (2516.12) in Canada. Is the merchandise eligible for a reduced rate of duty under NAFTA?

Answer: No. The shift from subheading 2516.11 to subheading 2516.12 is not an allowable tariff shift.

In addition, crude granite (2516.11) from a non-NAFTA country converted into granite chips (2517.49) in a NAFTA country does not qualify for NAFTA status, since shifts within Chapter 25 are not permitted.

SUBHEADING 2516.90

The principles outlined above also apply to other monumental or building stone classifiable in 2516.90.00. Crude or roughly trimmed serpentine, basalt, diorite, gabbro, diabase, syenite or gneiss (subheading 2516.90) quarried in a NAFTA country qualifies for NAFTA status. When the same crude stones quarried in a NAFTA country are "merely cut, by sawing or otherwise, into blocks of a rectangular shape" in a NAFTA country, this merchandise (also classifiable in 2516.90) is eligible for NAFTA treatment.

However, when crude serpentine, basalt, diorite, gabbro, diabase, syenite or gneiss (classifiable in 2516.90) quarried in a non-NAFTA country is "merely cut by sawing or otherwise into blocks or slabs of a rectangular shape" in a NAFTA country, this merchandise (also classifiable in 2516.90) would not be eligible for NAFTA status. No tariff shift has taken place.

SUBHEADING 6802.91

Clearly Chapter 25 stone quarried in a NAFTA country and processed into worked stone (6802) in a NAFTA country qualifies for NAFTA treatment. In addition, **General Note 12 to the HTS permits NAFTA treatment for 6802 merchandise (worked monumental or building stone) if a tariff shift took place from any other chapter. General Note 12(t) specifically allows shifts to headings 6801 through 6811 from any other chapter.**

Example 1: Crude or roughly trimmed marble (2515.11) from Spain is converted into worked marble (6802.91) in Canada (e.g., it is polished or ground or chamfered in Canada). Is this merchandise eligible for a reduced rate of duty under NAFTA?

Answer: Yes. The shift from 2515.11 to 6802.91 is allowable. Any shift from heading 2515 to heading 6802 (in fact, any shift from Chapter 25 to Chapter 68) would be permitted under General Note 12(t).

However, General Note 12 does not permit tariff shifts within heading 6802. If marble is processed in a non-NAFTA country to a point where it is classifiable in 6802.91 and additional processing steps are then performed in a NAFTA country (with the classification remaining in 6802.91), the merchandise would not be eligible for NAFTA treatment because no tariff shift has taken place. Furthermore, NAFTA status would not apply to marble which is simply cut or sawn with a flat or even surface (cut beyond the point allowable in Chapter 25) in a non-NAFTA country (6802.21) and then subjected to further processing in a NAFTA country (6802.91). The

shift from subheading 6802.21 to subheading 6802.91 is not an allowable tariff shift under NAFTA.

Readers of this publication should review the classification principles explained in our previous Informed Compliance Publications (**MARBLE** and **GRANITE**). In particular, one should understand the distinctions between stone classifiable in Chapter 25 and stone classifiable in heading 6802, as well as the distinctions between different Chapter 25 subheadings and different 6802 subheadings. This information is crucial since tariff shifts from 2515 or 2516 to 6802 are permissible while shifts between different Chapter 25 subheadings and between different 6802 subheadings are impermissible.

As explained in the previous publications, any one of numerous operations (e.g., dressing with a pick, bushing hammer or chisel; sand-dressing; grinding; polishing; chamfering; etc.) can shift the classification of a product from 2515.11 (crude marble) to 6802.91 (worked marble). See the Explanatory Notes to headings 2515 and 6802. When 2515.11 merchandise from a non-NAFTA country is converted into 6802.91 merchandise in a NAFTA country, an allowable tariff shift has taken place and the stone will qualify for NAFTA treatment.

However, when certain Chapter 68 operations are performed in the non-NAFTA country and additional operations are then performed in the NAFTA country (i.e., when 6802.91 merchandise from a non-NAFTA country is further processed in a NAFTA country and remains classifiable in 6802.91), no tariff shift has taken place and the merchandise will not qualify for NAFTA status.

Example 2: Marble is ground, chamfered or beveled in Italy (6802.91) and then polished in Canada (6802.91). Does this product qualify for NAFTA treatment?

Answer: No. In this situation no tariff shift has taken place and the merchandise would not qualify for NAFTA status.

Example 3: A marble slab from Spain (6802.91.05) is worked beyond the point of being a slab and converted into 6802.91.15 merchandise (Marble: Other) in Canada (e.g., it is cut or beveled more than three thirty seconds of an inch in Canada). Is this item eligible for a reduced rate of duty under NAFTA?

Answer: No. A change in classification from 6802.91.05 ("Marble: Slabs") to 6802.91.15 ("Marble: Other") is not an allowable tariff shift under

NAFTA. Thus, NAFTA status will not be granted when a marble "slab" from a non-NAFTA country (6802.91.05) is worked beyond the point of being a slab and converted into 6802.91.15 merchandise in a NAFTA country. (Our earlier publication on MARBLE explains the distinctions between a marble "slab" (6802.91.05) and marble worked beyond the point of being a slab (6802.91.15).)

Example 4: Marble is "simply cut or sawn, with a flat or even surface" (6802.21) in Italy and then further worked in any way (e.g., beveled or chamfered or polished, etc.) in Canada (6802.91). Does this merchandise qualify for NAFTA treatment?

Answer: No. A change in classification from subheading 6802.21 to subheading 6802.91 is not an allowable tariff shift. On the other hand, marble which is "merely cut, by sawing or otherwise into blocks or slabs of a rectangular shape" in a non-NAFTA country (2515.12.10) and then further worked in any way (e.g., polished, beveled, etc.) in a NAFTA country (6802.91) would qualify for NAFTA treatment, since the shift from heading 2515 to heading 6802 is an allowable tariff shift.

The examples discussed above indicate the significance of the distinction between the type of cutting and sawing described in heading 2515 and the type of cutting and sawing referred to in the 6802.2 provisions. This distinction is often crucial since shifts from heading 2515 to heading 6802 are permissible under NAFTA while shifts from the 6802.2 provisions to the 6802.9 provisions are not allowable.

While simple cutting from the quarry block is permitted for stone classifiable in Chapter 25, any cutting which goes beyond this point (e.g, smoothing the stone) requires classification in Chapter 68. See our previous publications on the classification of stone (**MARBLE** and **GRANITE**) as well as the Explanatory Notes to headings 2515 and 6802 for details on the type of cutting permitted in Chapter 25 and the type of cutting which dictates classification in Chapter 68.

SUBHEADING 6802.92

When crude or roughly trimmed limestone (2515.20) from a non-NAFTA country is converted into worked limestone (6802.92) in a NAFTA country (e.g., it is polished or ground or chamfered in the NAFTA country), the stone would be eligible for NAFTA treatment. (General Note 12(t) allows shifts to headings 6801 through 6811 from any other chapter.) However, when 6802.92

merchandise from a non-NAFTA country is further processed in a NAFTA country, the merchandise is still classifiable in 6802.92 and it will not qualify for NAFTA status. No tariff shift has taken place.

Furthermore, NAFTA status would not apply to limestone which is simply cut or sawn with a flat or even surface (cut beyond the point allowable in Chapter 25) in a non-NAFTA country (6802.22) and then subjected to any form of further processing in a NAFTA country (6802.92).

Example 1: Limestone is ground, beveled or chamfered in Italy (6802.92) and then polished in Canada (6802.92). Is this merchandise eligible for a reduced rate of duty under NAFTA?

Answer: No. In this situation no tariff shift has taken place and the merchandise does not qualify for NAFTA status.

Example 2: Limestone is simply cut or sawn with a flat or even surface in Greece (6802.22). It is then beveled or polished in Canada (6802.92.). Does this product qualify for NAFTA status?

Answer: No. The shift from subheading 6802.22 to subheading 6802.92 is not an allowable tariff shift under NAFTA.

SUBHEADING 6802.93

Crude or roughly trimmed granite (2516.11) from a non-NAFTA country converted into worked granite (6802.93) in a NAFTA country would be eligible for NAFTA treatment. Any shift from heading 2516 to heading 6802 is permitted under NAFTA.

However, when granite is processed in a non-NAFTA country to a point where it is classifiable in subheading 6802.93 and additional processing is then performed in a NAFTA country (with the classification remaining in 6802.93), the merchandise would not be eligible for NAFTA treatment because no tariff shift has taken place. In addition, NAFTA status does not apply to granite which is simply cut or sawn with a flat or even surface (cut beyond the point allowable in Chapter 25) in a non-NAFTA country (6802.23) and then subjected to further processing in a NAFTA country (6802.93).

Example 1: Crude or roughly trimmed granite from Spain (2516.11) is polished, ground or chamfered in Canada (6802.93). Is this

merchandise eligible for a reduced rate of duty under NAFTA?

Answer: Yes. The shift from 2516.11 to 6802.93 is allowable. Any shift from heading 2516 to heading 6802 (in fact, any shift from Chapter 25 to Chapter 68) would be permitted under General Note 12(t).

Example 2: Granite is ground, beveled or chamfered in Italy (6802.93) and then polished in Canada (6802.93). Does this merchandise qualify for NAFTA status?

Answer: No. A tariff shift has not taken place.

Example 3: Granite is simply cut or sawn with a flat or even status (6802.23) in Italy. It is then beveled or polished in Canada (6802.93). Is this merchandise eligible for a reduced rate of duty under NAFTA?

Answer: No. The shift from subheading 6802.23 to subheading 6802.93 is not an allowable tariff shift under NAFTA. However, granite which is “merely cut, by sawing or otherwise, into blocks or slabs of a rectangular shape” in a non-NAFTA country (2516.12) and then further worked in any way (e.g., beveled, polished, etc.) in a NAFTA country (6802.93) would qualify for NAFTA treatment, since the shift from heading 2516 to heading 6802 is an allowable tariff shift.

Since shifts from heading 2516 to heading 6802 are permissible under NAFTA while shifts from the 6802.2 provisions to the 6802.9 provisions are not allowable, it is crucial that we understand the distinction between the type of cutting and sawing described in heading 2516 and the type of cutting and sawing referred to in the 6802.2 provisions.

While simple cutting from the quarry block is allowable for stone classifiable in Chapter 25, any cutting which goes beyond this point (e.g., smoothing the stone) requires that the merchandise be classified in Chapter 68. See our previous publications on the classification of stone (**MARBLE** and **GRANITE**) as well as the Explanatory Notes on headings 2515, 2516 and 6802 for details on the type of cutting permitted in Chapter 25 and the type of cutting which dictates classification in Chapter 68.

SUBHEADING 6802.99

The principles explained above also apply to other worked monumental or building stone (e.g., serpentine, basalt, diorite, diabase, gabbro, syenite or gneiss) classifiable in subheading 6802.99.

Crude or roughly trimmed serpentine, basalt, diorite, diabase, gabbro, syenite or gneiss (2516.90) from a non-NAFTA country converted into worked serpentine, basalt, diorite, diabase, gabbro, syenite or gneiss (6802.99) in a NAFTA country would be eligible for NAFTA treatment. The change in classification from heading 2516 to heading 6802 is an allowable tariff shift under NAFTA.

However, when 6802.99 merchandise from a non-NAFTA country is further processed in a NAFTA country (with the classification remaining in 6802.99), the merchandise would not be eligible for NAFTA treatment because no tariff shift has taken place. In addition, NAFTA status would not apply to 6802.29 merchandise from a non-NAFTA country (stone which is simply cut or sawn with a flat or even surface in a non-NAFTA country) converted into 6802.99 merchandise (i.e., subjected to any further working) in a NAFTA country.

Example 1: Crude or roughly trimmed serpentine from Taiwan (2516.90) is polished, ground or chamfered in Canada (6802.99). Does this merchandise qualify for NAFTA status?

Answer: Yes. The shift from 2516.90 to 6802.99 is allowable. Any shift from heading 2516 to heading 6802 (in fact any shift from Chapter 25 to Chapter 68) is permitted under General Note 12(t).

Example 2: Gabbro is ground, beveled or chamfered in Greece (6802.99) and then polished in Canada (6802.99). Is this stone eligible for a reduced rate of duty under NAFTA?

Answer: No. In this situation no tariff shift has taken place and the merchandise would not qualify for NAFTA status.

Example 3: Basalt is simply cut or sawn with a flat or even surface in Italy (6802.29). It is then beveled or polished in Canada (6802.99). Does this stone qualify for NAFTA status?

Answer: No. The change in classification from subheading 6802.29 to subheading 6802.99 is not an allowable tariff shift under NAFTA.

[Please note that our discussion of worked serpentine classifiable in 6802.99

refers to building stone (i.e., slabs and tiles) of serpentine. Articles of serpentine are classifiable in subheading 7116.20. See our previous publication on **MARBLE** for more detailed information on the classification of serpentine products.]

HEADING 6810

Worked monumental or building stone is classifiable in heading 6802 assuming the stone is natural. However, artificial stone is classifiable in heading 6810. The Explanatory Notes to headings 6802 and 6810 indicate that artificial stone is formed when pieces of natural stone or crushed or powdered natural stone (e.g., limestone, granite, marble) is agglomerated with plastics, cement, lime or other binders.

Under General Note 12(t), tariff shifts to heading 6810 from other chapters are permitted. When pieces of natural stone or crushed or ground natural stone (classifiable in Chapter 25) from a non-NAFTA country and plastic resins (Chapter 39) from a non-NAFTA country are agglomerated to form artificial stone (6810) in a NAFTA country, this merchandise would be eligible for NAFTA treatment. However, General Note 12 does not permit tariff shifts from subheading to subheading within heading 6810.

THE IMPORTER'S RESPONSIBILITIES

An importer who purchases monumental or building stone from a firm in a NAFTA country should have an understanding of the principles of NAFTA eligibility. Prior to importation, one should determine the precise manner in which the stone was quarried and processed. The importer should verify that the foreign shipper has information on each step in the processing of the stone and the country in which each step was performed. A NAFTA claim should be made only if the importer is certain that the shipper has information which indicates that the stone is eligible for NAFTA status under General Rule (12) of the HTS.

If a NAFTA claim is made, the filer of the entry must possess a certificate of origin. (This document must be signed by the shipper of the merchandise.) U.S. Customs may request the filer of the entry to submit the certificate of origin. In addition, U.S. Customs may ask the shipper in the NAFTA country for precise information on every step in the processing of the stone in order to determine whether or not the merchandise is eligible for NAFTA status.

An importer who is making a NAFTA claim should know whether or not every

step in the quarrying and working of the stone was performed in the NAFTA country. **If some work was done in a non-NAFTA country while other steps were performed in a NAFTA country, the importer must be certain that the supplier has information which proves that a permissible tariff shift took place. The supplier must retain all documents and records (invoices, bills of lading, other shipping documents) that reflect the shipment and purchase of stone from a non-NAFTA country which is then further worked in a NAFTA country. The supplier must retain all records and documents that indicate the manner in which the stone was worked in the non-NAFTA country and the manner in which it was further worked in the NAFTA country.**

Often a supplier of stone from a NAFTA country deals in stones which qualify for NAFTA treatment as well as stones which do not qualify. Some products may undergo allowable tariff shifts while others do not. Therefore, in order to allow Customs to verify NAFTA claims, it would be helpful if the firm in the NAFTA country maintains separate storage and processing facilities for these items. If all the stones are simply stored and processed together and the firm fails to document the precise work performed on each, we will be unable to verify the merits of the NAFTA claims. U.S. Customs must be able to track the complete history of a particular stone and determine the precise work which was performed in the NAFTA country.

Nevertheless, even if the stones which qualify for NAFTA treatment and those which fail to qualify are stored and processed together, U.S. Customs will be able to verify whether or not the merchandise is NAFTA eligible if the firm in the NAFTA country maintains clear records of the lot numbers and style numbers for each stone. It is crucial that these numbers follow each stone at every stage in the processing of the merchandise. This would enable U.S. Customs to verify every operation that is performed on a particular stone and to determine whether or not an allowable tariff shift has taken place. However, if the records for different stones are confused and we are unable to follow each step in the work performed on a particular product, we will not be able to determine whether the item qualifies for NAFTA treatment.

The importer should know which tariff shifts are allowable and which tariff shifts are impermissible under General Rule 12(t). NAFTA claims may be made when 2515 or 2516 merchandise from a non-NAFTA country is converted into 6802 merchandise in a NAFTA country. However, NAFTA claims may not be made in any of the following situations:

- 1) When 6802.2 stone from a non-NAFTA country is converted into 6802.9

stone in a NAFTA country.

2) When 6802.9 stone from a non-NAFTA country is further worked in a NAFTA country with the classification remaining in the 6802.9 provisions.

3) When 2515.11 stone from a non-NAFTA country is converted into 2515.12 stone in a NAFTA country.

4) When 2516.11 stone from a non-NAFTA country is converted into 2516.12 stone in a NAFTA country.

While tariff shifts from Chapter 25 to heading 6802 are permissible under NAFTA, shifts within Chapter 25 and shifts from one subheading to another within heading 6802 are impermissible. An importer must understand these principles before making a NAFTA claim.

The importer should be aware of the distinctions between different HTS subheadings for stone. These classification distinctions are crucial factors in any determination of whether an allowable tariff shift has taken place. An importer of monumental and building stone should understand the differences between merchandise classifiable in Chapter 25 and merchandise classifiable in heading 6802. In addition, the importer should understand the distinctions between different subheadings within Chapter 25 and different subheadings within heading 6802.

A great deal of stone eligible for NAFTA treatment is produced in the NAFTA countries. However, the NAFTA countries also import a great deal of stone from non-NAFTA countries. In some instances this stone is worked sufficiently in the NAFTA country to permit NAFTA treatment. However, in other instances the non-NAFTA stone is not worked at all in the NAFTA country or the work which takes place does not constitute an allowable tariff shift. Therefore, when both NAFTA and non-NAFTA countries are involved in the production of the stone, information on the precise work performed in each country is crucial. The shipper in the NAFTA country should keep clear records documenting each step in the processing of the stone and the country in which each step takes place.

When both NAFTA and non-NAFTA countries are involved in the production of a stone, the importer should know the precise form of the stone when it was shipped from the non-NAFTA country to the NAFTA country, every step which was then performed in the NAFTA country and the final form in which the merchandise is shipped to the United States. This information is essential to a determination of

whether or not a NAFTA claim can be made.

Prior to the importation of a particular stone product, an importer or a foreign supplier who is not certain regarding the NAFTA status of this item may request that U.S. Customs issue a binding ruling on the NAFTA eligibility of the merchandise. The ruling request should include information on the exact manner in which the stone was worked. If the production of the stone took place in more than one country, the ruling request should indicate the country in which each step in the processing of the stone took place.

The ruling request should also include a sample of the item. If the product is too large to submit as a sample, the inquirer should submit a portion of the stone which includes sections of the face as well as the side (or edge) and corner.

INVOICING REQUIREMENTS

Invoicing requirements for importations of monumental or building stone involving NAFTA claims are the same as the general invoicing requirements for stone discussed in our previous publications. See our Informed Compliance Publications on **MARBLE** and **GRANITE**. Also please see Section 141.86 of the Customs Regulations (19 C.F.R. 141.86) for general invoicing requirements.

The style number or brand name of the stone is very important and it would be helpful if this information appears on the invoice along with the marks, numbers and symbols which represent this merchandise. In addition, the invoice should indicate the geological nature of the stone (granite, basalt, gabbro, marble, limestone, serpentine, etc.) as well as the unit value, total value of the shipment, quantity and terms of sale.

Furthermore, the invoice should describe the exact form of the stone which is being imported and the precise extent to which it has been worked. Since the precise manner in which the stone was worked is often crucial to a NAFTA determination, one should be able to answer the following questions before making a NAFTA claim. It would be very helpful if this information appears on the invoice:

- 1) Is the product an article, crude or roughly trimmed stone, crushed or ground stone, an unworked slab, a worked slab, etc.?
- 2) Has the stone simply been cut from the quarry block or has it been further worked? Has it been precision cut, honed, edge worked, beveled, dressed with a tool, furrowed, sand dressed, planed, ground, polished, chamfered, molded,

ornamented, carved, etc.? What is the precise extent to which the stone has been worked? (It would be very helpful if the invoice provides an exact description of all operations applied to either the face or edges of the stone.)

3) What is the area and thickness of the product?

When more than one country is involved in the production of the stone, it is very helpful if the invoice from the seller in the NAFTA country presents a full and accurate description of the merchandise including information on the precise manner in which the stone was worked in the NAFTA country. It is also important that information on the precise extent to which the stone was worked in the non-NAFTA country be present on the invoice representing the sale from the firm in the non-NAFTA country to the company in the NAFTA country.

The original invoice from the non-NAFTA country (as well as any other shipping documents) should be retained by the firm in the NAFTA country. In order to allow U.S. Customs to track the precise work which was done in each country, it is important that the same style number or brand name be retained through the chain of documents (i.e., the invoice from the supplier in the NAFTA country should use the same style number which was used on the invoice documenting the sale of the original stone from the non-NAFTA country). By examining all the documents, we should be able to determine the extent to which the stone was worked in each country and whether or not an allowable tariff shift took place in the NAFTA country.

If the supplier in the NAFTA country originally purchased the stone from another firm in the NAFTA country, the supplier should retain the invoice from the first firm documenting the precise work which the original company performed on the stone. If, in turn, the first firm in the NAFTA country had purchased the stone from a company in a non-NAFTA country, the invoice and other documents representing the original sale from the non-NAFTA country must be retained. The invoice from the non-NAFTA country should document all the work performed on the stone in the non-NAFTA country.

ADDITIONAL INFORMATION

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade

friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. The CEBB may be accessed by modem or through Customs Home Page on the World Wide Web. If you access it by modem, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 921-6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 921-6236.

The Internet

The Customs home page on the Internet's World Wide Web --which began public operation on August 1, 1996-- also provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed and final regulations, rulings, news releases, Customs publications and notices, *etc.*, which may be searched, read online, printed or "downloaded" to your own PC. In addition, the CEBB (see above) may be accessed through our Home Page. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is <http://www.customs.ustreas.gov>.

Customs Regulations

The current edition of *Customs Regulations of the United States*, in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1997 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1996 through March, 1997 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("*Customs Bulletin*") is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U. S. Court of International Trade and

Customs related decisions of the U. S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The Customs Bulletin is available for sale from the Superintendent of Documents.

Video Tapes

- The U.S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new *Rules of Origin for Textiles and Apparel Products* which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for \$20.00 (U.S. funds) directly from the Customs Service (see below for ordering information).

- In order to assist the trade, Customs has prepared a video tape entitled "*Customs Compliance: Why You Should Care.*" This 30 minute tape is divided into two parts. Part I, almost 18 minutes in length, is designed to provide senior executives and others in importing and exporting companies with an overview of some significant features of the Customs "Modernization Act" and some major reasons for adopting new strategies for minimizing legal exposure under this Act. Part II is intended primarily for compliance officers, legal departments and company officers involved in importing and exporting. This latter Part, approximately 12 minutes in length, explains why Customs and the trade can benefit from sharing responsibilities under Customs laws and it provides viewers with some legal detail relating to record keeping, potential penalties for non-compliance, and Customs Prior Disclosure program.

Part I features former Customs Commissioner George Weise, Assistant Commissioner for Regulations and Rulings Stuart Seidel, and Motorola's Vice President and Director of Corporate Compliance, Mr. Jack Bradshaw. Assistant Commissioner Seidel is the only speaker in Part II. The tape is priced at \$15.00 including postage (see below for ordering information).

- The U. S. Customs Service has also prepared a 13-½ minute videotape, in VHS format, on Account Management. The videotape titled *Account Management: Team Building for World Trade* contains discussion on what Account Management is, why there is a need for Account Management, and discussions with Customs Account Managers and Accounts relating to the benefits of Account Management from both the perspective of the Customs Service and the Trade Community. The tape is priced at \$15.00 including postage (see below for ordering information).

Video Tape Ordering Information: If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, Suite 3.4A, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

Informed Compliance Publications

The U. S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About*: series, which are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available:

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| ■ <u>Fibers & Yarns</u> | ■ <u>Articles of Wax, Artificial Stone and Jewelry</u> |
| ■ <u>Buying & Selling Commissions</u> | ■ <u>Classification of Festive Articles</u> |
| ■ <u>NAFTA for Textiles & Textile Articles</u> | ■ <u>Tariff Classification</u> |
| ■ <u>Raw Cotton</u> | ■ <u>Ribbons & Trimmings</u> |
| ■ <u>Customs Valuation</u> | ■ <u>Footwear</u> |
| ■ <u>Textile & Apparel Rules of Origin</u> | ■ <u>Agriculture Actual Use</u> |
| ■ <u>Distinguishing Bolts from Screws</u> | ■ <u>Reasonable Care</u> |
| ■ <u>Mushrooms</u> | ■ <u>Drawback</u> |
| ■ <u>Marble</u> | ■ <u>Lamps, Lighting & Candle Holders</u> |
| ■ <u>Peanuts</u> | ■ <u>ABC's of Prior Disclosure</u> |
| ■ <u>Caviar</u> | ■ <u>Rules of Origin</u> |
| ■ <u>Bona Fide Sales & Sales for Exportation</u> | ■ <u>Records & Recordkeeping Requirements</u> |
| ■ <u>Caviar</u> | ■ <u>Waste & Scrap of Chapter 81</u> |
| ■ <u>Granite</u> | ■ <u>NAFTA Eligibility for Building Stone</u> |
| ■ <u>Internal Combustion Piston Engines</u> | ■ <u>Gloves</u> |
| ■ <u>Vehicles, Parts and Accessories</u> | |

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 CFR §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

"Your Comments are Important"

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs, call 1-888-REG-FAIR (1-888-734-3247).